IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/11/2004

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ
AND
THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

WRIT APPEAL NO.107 OF 2002
and
W.A.M.P.No.180 of 2002

M. Muthusamy Naicker ... Appellant

-vs-

The Land Acquisition Officer-cum-
Revenue Divisional Officer,
Erode-638 001 ... Respondent

Appeal filed under Clause 15 of Letters Patent against the order dated 05.12.2001 made in W.P.No.14981 of 2001.

!For appellant: : Mr.Arulmurugan

^For respondent: Mr.V.Subbarayan,Spl.G.P.

:JUDGMENT

(Judgment of the Court was delivered by V.KANAGARAJ,J)

This writ appeal is preferred against the order dated 05.12.2001 made in W.P.No.14981 of 2001 by learned Single Judge of this Court dismissing the said writ petition

without costs which has been filed by the appellant herein seeking to issue a writ of certiorari, calling for the records of the respondent relating to Award No.1/2001(Ref.5032/2001/A3 dated 30.7.2001 and quash the same.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the appellant-writ petitioner filed the above writ petition to issue a Writ of Certiorari , to call for the records of the respondent relating to the Award No.1/2001(Ref.5032/2001/A3)dated30.7.2001 and to quash the same.

3. The case of the appellant/petitioner is that the land in

Survey No.113/2-B of Soorampatti Village,Erode Taluk, Erode District belongs to the petitioner; that he purchased the same for valuable consideration on 17.1.1973 and constructed a pucca building; that proceedings were initiated for acquiring the land for the alleged purpose of construction of compound wall for the Erode Collectorate and Notification under Section 4(1) of Land Acquisition Act was issued in G.O.Ms.No.1 050 Housing and Urban Development dated 22.7.1988; that Declaration under Section 6 of the said Act was issued in G.O.Ms.No. 868 Housing and Urban Development,

dated 26.6.1989 and the substance of Declaration under Section 6 of the Land Acquisition Act was published on 28.8.1989; the petitioner challenged the acquisition proceedings in W.P.No.12305 of 1989 and obtained an order of stay on 12.9.1989; that the said writ petition was ultimately dismissed on 15.6.1999; that the petitioner filed a Writ Appeal in W.A.No1942 of 1999, but the same was dismissed even in the admission stage itself; that the petitioner has preferred Special Leave Petition before the Supreme Court of India against the dismissal order of the writ appeal and the same was dismissed on 10.4.2000; that no award was passed pursuant to the Section 4(1) Notification dated 22 .7.1988 and Section 6 Declaration dated 26.8.1989; that the Assistant Engineer, Public Works Department Buildings and Maintenance, Erode called upon the petitioner on 5.1.2000 to hand over the possession of the property; that therefore, the petitioner has filed another writ petition in W.P.No.680 of 2000 before this Court and the same is pending and subsequently, the petitioner has filed W.P.No.680 of 2000 questioning the proceedings issued by the respondents and obtained an order of dispossession on 18.1.2000; that the same was dismissed; that the award was passed on 30.7.2001 and the said award, which is under challenge before this Court.

4. The contention of the other side is that the order of the learned Single Judge is in accordance with law besides that it has been considered along with the decision already taken in similar cases; that impugned Judgement is similar to the decision of this Court in the case of V.N.Mohamed Hussain -vs- State of Tamil Nadu (ICR(1996) 3 Madras 784) wherein it has been held as follows.
" In order to have the benefit of Sec 11/A of the Act and to compute the period of two years from the date of publication of the declaration, the land owner of the "persons" interested in the land under acquisition or any other person must not have obtained any orders from a court restraining any action or proceedings to be taken in pursuance of the declaration made under Section 6 of the Act."

The above decision is squarely applicable to the instant case; that the stay granted in W.P.No.680 of 2000 is against taking possession of the land under acquisition;the said order was in force, when the award in this case was passed, hence the award cannot be held to have been passed beyond the period of limitation and he would pray for dismissal of the above writ appeal as devoid of merits and efficacy.

5. Since the learned single Judge dismissed the writ petition , the

appellant/petitioner has come forward to file the above writ appeal on certain grounds as broughts forth in the grounds of appeal.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel appearing for the appellant/writ petitioner and the learned Special Government Pleader contra, this Court is able to assess that a notice issued by the Assistant Engineer (Buildings and Maintenance) seeking to hand over the possession of the land which has been acquired, within fifteen days from the date of the receipt of the notice least causing the petitioner that he would be evicted since the property is that of the Government, has been challenged in the said writ petition. This writ petition has absolutely nothing to do with the other procedure adopted regarding the acquisition proceedings initiated pertaining to the property which has been acquired from the petitioner.

7. In fact, challenging the acquisition proceedings on legal ground, particularly on the ground of

delay between the declaration under Section 6 of the Land Acquisition Act and the passing of the award had already been dealt with by the learned Single Judge in W.P.No.14981 of 2001 and the learned Single Judge having found that the award has already been passed within the period stipulated under Section 11 A of the said Act, ultimately dismissed the writ petition since it was not on merit as per its order dated 5.12.2001.

8. Today, when the above writ appeal was actively considered, the learned Special Government Pleader besides arguing the merit would also cited the Judgement of the Hon'ble Apex Court reported in Municipal Corporation of Delhi -vs- Lichho Devi (AIR 1997 Supreme Court, 3474) stating that the subject matter of the above writ appeal is directly covered under its own Judgment delivered in Government of Tamil Nadu -vs- Vasantha Bai (AIR 1995 Supreme Court 1778) in which the Supreme Court has confirmed the order of the Division Bench of this Court. Therefore, it has become necessary on our part to extract the relevant passage from the said Judgment.

"…. The Division Bench of the High Court was clearly in error in taking the contrary view. We, therefore,hold that the stay of dispossession would tantamount to stay of further proceedings being taken under S.11 and Explanation to S.11-A, covers such an order and the entire period of stay has to be excluded in computing the period of two years prescribed by S.11-A"

We are in perfect agreement, not only with the proposition profounded on the part of Hon'ble Supreme Court in this regard, but also the order of the learned Single Judge and therefore, the writ appeal only fails and hence the following order.

In result,

i) the above writ appeal stands dismissed;

ii) the order of the learned Single Judge dated 5.12.2001 made in W.P.No.14981 of 2001 is confirmed;

iii) Consequently, connected W.A.M.P.No.180 of 2002 is also

dismissed
No costs.
Index :Yes
Internet:Yes
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To
The Land Acquisition Officer-cum-
Revenue Divisional Officer,
Erode-638 001